the probable future demand for members of the legal profession. The Committee, on the other hand, is canvassing the situation through the many channels open to the American Bar Association, to discover what lawyers of ability are available for the Government.

The survey so far made shows that lawyers are wanted by the Government in a variety of capacities, both legal and executive, volunteer and compensated, to work in Washington and elsewhere,—that the Association, in short, has a splendid opportunity for National Service. The Special Committee is now preparing as rapidly as possible to perform this service, and expects soon to be in a position promptly and capably to answer the call of any Department for men with legal experience.

The Committee asks that all lawyers willing and able to serve the Government at this time send their names to the American Bar Association at 1712 Eye Street, Washington, D. C., with a brief statement of their training and qualifications and the conditions under which they are able to serve.

Very truly yours,

LAWRENCE G. BROOKS,

Secretary Special Committee for War Service."

EFFECT OF CHANGE OF LAW UPON OBLIGATION TO PAY RENT.—In *McCullough Realty Co.* v. *Laemmle Film Service,* (Nov. 16, 1917), 165 N. W. 33, the supreme court of Iowa had occasion to pass upon a question which has become increasingly frequent with the spread of prohibition laws, namely, the effect upon the obligation of a tenant to pay rent, of a subsequent law that makes it unlawful for him to use the premises for the purpose for which he leased them. The case before the Iowa court was not one arising out of a lease of premises for saloon purposes, but the question involved was precisely the same, and the saloon cases were relied upon for the decision. The action was for rent upon a written lease containing the following clause: "Said premises are leased for Film Exchange and film and theatre supplies purposes only and are not to be used for any unlawful or offensive purposes whatever." The defendant contended that by reason of a city ordinance, passed after the demise, providing that it should be unlawful to store, handle, etc. any inflammable motion picture films in buildings which are not fireproof, it had become impossible to use the premises for the purposes for which they were leased. The lessee had vacated the premises. It appeared that the handling of films was 99 per-cent of the business of a film exchange, and that it was wholly impracticable to keep the films at one place and have the office at another. Being of opinion that "the entire beneficial use of the leased premises was prevented by the ordinance", the court held the defendant freed of the obligation to pay rent.

Where a lease contains a clause *permitting* the premises to be used for saloon purposes and the premises are in fact so used, a subsequent change in the law making it unlawful to operate a saloon does not affect the tenant's rent liability. *Hayton* v. *Seattle Brewing and Malting Co.,* (1911), 66 Wash. 248, 37 L. R. A. (N. S.) 432; *Hyatt* v. *Grand Rapids Brewing Co.,* (1912), 168 Mich. 360. But where the lease restricted the use of the premises to such

purpose, such subsequent change in the law was held to release the tenant. *The Stratford Inc.* v. *Seattle Brewing & Malting Co.*, (1916), 94 Wash. 125, L. R. A. 1917 C 931. So also in *Heart* v. *East Tennessee Brewing Co.*, (1908), 121 Tenn. 69, 19 L. R. A. (N. S.) 964; *Greil Bros. Co.* v. *Mabson*, (1912), 179 Ala. 444, 43 L. R. A. (N. S.) 664; *Kahn* v. *Wilhelm*, (1915), 118 Ark. 239. On the other hand, it has been held that even when the use of the leased premises is restricted to the business later made unlawful, there is no release from rent liability. *Lawrence* v. *White*, (1909), 131 Ga. 840, 19 L. R. A. (N. S.) 966 *dictum; Goodrum Tobacco Co.* v. *Potts-Thompson Liquor Co.*, (1910), 133 Ga. 776, 26 L. R. A. (N. S.) 498; *Hecht* v. *Acme Coal Co.*, (1911), 19 Wyo. 18, 34 L. R. A. (N. S.) 773 *semble.*

If the subsequent change in law does not prevent *entirely* the beneficial use of the demised premises, the tenant may be held liable despite the fact that he is prevented from carrying on the principal business for which the premises were taken. *Standard Brewing Co.* v. *Weil*, (1916), 129 Md. 487. So where a "saloon" is considered as not necessarily a place where intoxicating liquors are sold, the tenant must pay, for he may dispense soft drinks, etc. *O'Byrne* v. *Henley*, (1909), 161 Ala. 620, 23 L. R. A. (N. S.) 496; *Hecht* v. *Acme Coal Co., supra; In re Bradley*, (1915), 225 Fed. 307.

That a "saloon" is not necessarily a place where intoxicants are sold, see also *Kitson* v. *Ann Arbor*, 26 Mich. 325. Such liberal meaning of the word, however, has been denied. *The Stratford, Inc.* v. *Seattle Brewing & Malting Co., supra.* But where the lease restricts the use of the premises to purposes of a "bar" or "bar-room", it is considered that intoxicating liquors are to be sold. *Greil Bros. Co.* v. *Mabson, supra,* and in *The Stratford, Inc.* v. *Seattle Brewing & Malting Co., supra,* the tenant was deemed discharged despite the fact that by a modification of the lease permission had been given to operate on the premises a bootblacking stand and a restaurant and to sell tobacco, the court going on the ground that the running of a saloon was the real purpose for which the premises had been leased; it was that which fixed the rental. The principal case thus accords with the case just cited. See also *Kahn* v. *Wilhelm, supra.*

The decisions that the lessee is relieved from his obligation to pay rent are not agreed as to the reason for such result. In the *Heart* case the court went on the ground that the purpose for which the lease was made having become unlawful the whole lease "became and is void and unenforceable at the instance of either party." In the *Greil Bros. Co.* case the court speaks of subsequent impossibility of performance by reason of change in law and also of destruction of a thing the continued existence of which is assumed as a basis of the agreement. *Kahn* v. *Wilhelm* went on the ground that the performance having become unlawful the contract was void. And in *The Stratford* case the court treated the problem as covered by the general rule that performance of a contract is excused when by subsequent change in law the acts called for are rendered unlawful.

Where premises are leased and it is stipulated that they shall be used only for a certain purpose and by a change in law such use is made unlawful, it is of course perfectly clear that the tenant could not be required to abide

by the restrictive term of the lease. *Baily* v. *De Crespigny*, L. R. 4 Q. B. 180. But does it necessarily follow that the whole lease is at an end or void, as said by some courts? Should such illegality of performance any more than drop such restrictive provision out of the lease? The lessee would then be left free to use the premises for any lawful purpose. If the whole lease is to be treated as at an end, must it not be on the theory that a condition to that effect is to be implied? As to whether there is sufficient reason for reading such a condition into such leases there may well be differences of opinion. It is not surprising then, as pointed out above, that the cases are not agreed; but it is believed that the cases holding the lessee completely discharged at least have gone on unsound grounds.

In support of the view that the lessee should be relieved *Hooper* v. *Mueller*, (1909), 158 Mich. 595, is apt to be cited. There it was held that the provisions of the "local-option law" having become operative in the county in which were saloon premises held by defendant as lessee, he was released from the obligation of paying rent. It must be observed that the lessors had there agreed "that in case they are unable to furnish, that is, secure, for the said second parties, or the tenant of said parties, two sufficient bondsmen required by law in case of retail dealers in malt and spirituous liquors, at second parties's own proper expense, however, then this lease shall be and become void". The vote in favor of local option having made it impossible for the lessors to furnish such bondsmen, the lease by its very terms was void, and the court so held. The case, then, does not furnish any ruling whatever on the main question under discussion. The Arkansas court, however, in *Kahn* v. *Wilhelm*, *supra*, failed completely to appreciate what the court had to decide in *Hooper* v. *Mueller*. R. W. A.

MITIGATION OF DAMAGES IN BREACH OF CONTRACT—DUTY TO ACCEPT OFFER OF DEFAULTING CONTRACTOR.—There has been a decided reluctance on the part of some courts to apply the doctrine of mitigation of damages to the extent of requiring the injured party to accept delayed or altered performance offered by the defaulting contractor after breach. Thus, in the recent case, *Coppola* v. *Marden, Orth & Hastings Co.*, (Ill. 1917), 118 N. E. 499, where the sale was on 60-day credit and the vendor's offer after breach to sell for cash was refused, the court declined to rule that the vendee's recovery would be merely the amount of interest for the period of credit on the sums involved. Other courts, however, have put the defaulter on the same plane as any other offeror on the market. An early case suggested that a discharged employee would be obliged to re-enter his master's service in order to reduce the damage. *Saunders* v. *Anderson*, 2 Hill Law, (S. C.), 486. This dictum was followed in *Birdsong* v. *Ellis*, 62 Miss. 418. And the same conclusion was reached in: *Squire* v. *Wright*, 1 Mo. App. 172; *Hamill* v. *Foute*, 51 Md. 419; *Bigelow* v. *Amer. Forcite Powder Mfg. Co.*, 39 Hun 599. That a lessee must accept the premises offered after breach of contract of lease was held in: *Hodges* v. *Fries & Co.*, 34 Fla. 63; *Huntington Co.* v. *Parsons*, 62 W. Va. 26. The idea was given a decided impetus by the decision of Lurton, J. (under facts analogous to those of the instant case) in